

GUIDELINES FOR CONDUCTING LOSS CONTROL COMMITTEE MEETINGS

Open Records / Open Meetings

The state of North Dakota is operating under the premise that the *Best Government* is an *Open Government* – that is why North Dakota is an Open Records State.

The North Dakota Supreme Court summarized the purpose of the open records law shortly after its enactment:

What the Legislature was attempting to accomplish was to provide the public with the right and the means of informing itself of the conduct of the business in which the public has an interest, in order that the citizen and taxpayer might examine public records to determine whether public money is being properly spent, or for the purpose of bringing to the attention of the public irregularities in the handling of public matters.

To serve this important public purpose, these open records provisions should be construed liberally in favor of the public's access to information.

In 1997 steps were taken to ensure proactive risk management loss control efforts do not create paper records that could be prejudicial to the State during litigation. The 1997 Legislature enacted statutes that provide *certain risk management records and certain loss control committee records and meetings are PRIVILEGED and EXEMPT* from the State's open records and open meetings laws. (N.D.C.C. § 32-12.2-12)

Loss Control Committee Meetings

Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

Loss control committee meetings are considered open meetings. Every person has the right to attend any open meeting. Every person also has the right to enforce open meeting laws if violated. However, loss control committee meetings regarding closed records of a specific pending or reasonably predictable claim against the state or a state employee should be held in an **executive session**.

Notices of Open Meetings

See *Notice Checklist* at www.ag.nd.gov (link to Open Records and Meetings).

There are several statutory requirements for conducting open meetings. One of the first requirements is giving proper notice of the meetings.

Guidelines for giving proper notice are found in N.D.C.C. § 44-04-20:

- Public notice *must* be given in advance of all meetings (but does not need to be published). This includes meetings held by conference call and video conference. If a meeting is postponed or rescheduled, a new notice *must* be provided;
- Notice *must* have: date, time, location of meeting, the topics to be considered/agenda, and general subject matter of any executive session expected to be held during the meeting;

- Annually file in January the schedule of the meetings with the Secretary of State (SFN 51392 Notice of Meeting Access to Public Records at www.nd.gov/eforms/Doc/sfn51392.pdf);
- Post a copy of the notice in the entity's principal office (bulletin board) when the members of the loss control committee are notified of the meeting. Provide copy of notice to anyone requesting it. Also, post a copy of the notice at the location of the meeting on the day of the meeting. Unless *all* the information contained in the notice was previously filed with the Secretary of State, it must be filed in that office;
- If meeting is rescheduled, new notice *must* be provided; and
- If there is a special or emergency meeting, notify the entity's official newspaper.

Exemptions from the open records law *must* be specifically provided by law. If records are 'exempt' or 'confidential', the portion of the meeting to discuss those records is called the "**Executive Session**", which is closed to the public. The rest of the meeting *must* be open. The loss control committee's authority to hold an executive session may be invoked only during a properly noticed open meeting.

- An executive session is where loss control committees should review Risk Management records regarding a specific pending or reasonably predictable claim against the state or a state employee, i.e. records relating to the funds or liability reserves of the Risk Management Fund established for the purpose of satisfying the claim, loss run reports, incident reports, investigation reports, and any other risk management to determine root cause of the incident or claim.
 - Documentation distributed for discussion in the executive session needs to be collected at the end of the session and shred at the end of the meeting.

Procedures for Conducting Executive Sessions

The procedures for conducting executive sessions are specified by law:

- ✓ Convene in an open session following proper public notice;
- ✓ Announce during the open portion of the meeting the topics to be considered during the executive session and the legal authority for holding an executive session on those topics (N.D.C.C. §§ 32-12.2-11 and 32-12.2-12);
- ✓ Pass a motion to hold an executive session;
- ✓ Record the executive session electronically or on audio or video tape and retain for one (1) year for Risk Management purposes;
- ✓ Limit the topics considered during the executive session to the announced, authorized topics; and
- ✓ Take final action on the topics considered in the executive session during the open portion of a meeting. (*Report in the open session and document in the Minutes what actions will be taken as a result of reviews conducted in the executive session, i.e. revision of policies or procedures, more training, revise a policy*).

Minutes

Minutes must be kept of all open meetings and are records subject to N.D.C.C. § 44-04-18. Minutes of executive session/closed portion of meeting should not be taken (but the fact an executive session was held *must* be recorded).

The minutes *must* include, at a minimum:

- ✓ The names of the members attending the meeting;
- ✓ The date and time the meeting was called to order and adjourned;

- ✓ A summary of topics discussed regarding public business, but not disclosing any closed, confidential, or privileged information;
- ✓ A description of each motion made at the meeting and whether the motion was seconded;
- ✓ The results of every vote taken at the meeting; and
- ✓ The vote of each member on every recorded roll call vote.

Minutes of the closed portion of meeting/executive session *must* reflect:

- ✓ Members attending the executive session;
- ✓ The date and time the executive session was called to order and adjourned;
- ✓ A summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, i.e. review of Risk Management claims and incident reports; and
- ✓ The legal authority for holding the executive session.

Sample Language

The next item on the agenda is a review of incidents, accidents, claims and lawsuits. This item must be discussed in an executive session. The legal authority for closing this portion of the meeting is North Dakota Century Code section(s) 44-04-17.1(2) and (4); 32-12.2-11 and 32-12.2-12

At this time, a motion would be in order to discuss the next topic in executive session rather than in an open meeting. Is there such a motion? . . . Any second? . . . Any discussion on the motion? . . . I'll call the roll. Motion carried.

The executive session will be recorded and all members of the loss control committee are reminded to limit their discussion during the executive session to the announced topic. Any collective decision, collective commitment, or other final action by the loss control committee must occur after it reconvenes in an open meeting, unless final action is specifically required by law to be taken during the executive session.

We will now ask the members of the public who are attending the meeting to leave the room. We anticipate adjourning the executive session, and reconvening the open portion of the meeting, at approximately [Time] .

The minutes will show that the executive session began at [Time] and was attended by [members] .

[After the executive session] The minutes will show that the executive session was adjourned at [Time] . The public has been invited to return to the meeting room and we are now back in open session.

☒ Language to Document an Executive Session:

Motion was made by [member's name] and seconded by [member's name] , that the Committee enter into the Executive Session, (closed meeting), electronically recorded ... Motion carried. [Time] a.m./p.m. Executive Session Authority N.D.C.C. §§ 32-12.2-11 and 32-12.2-12.

All members named above were in attendance for the Executive Session.

Workers Compensation Loss Control Reports and Risk Management Division reports containing updated information since the [date of last meeting] were reviewed.

A motion was made by [member's name] and seconded by [member's name] that the Executive Session be closed. Motion carried, Executive Session closed at [Time] a.m./p.m.

☒ Language to Document "NO" Executive Session:

Since there were no Workers Compensation or Risk Management claims or incident activity to discuss in Executive Session, it was the general consensus to forgo the Executive Session and continue the open session of the Loss Control Committee Meeting.

Additional Resources and References:

- ✦ Open Records and Meetings Manual - www.ag.nd.gov (link to Open Records and Meetings)
- ✦ Risk Management Manual, Section 4 - www.nd.gov/risk/publications/manual.html
- ✦ Loss Control Committee Sample Documents - www.nd.gov/risk/safety/samples.html
- ✦ Sample Loss Control Committee Manual - www.nd.gov/risk/safety/samples.html
- ✦ Schedules for Portions of Committee Meeting Agendas Specific to Qualifying for the RMF and RMWCP Discounts - www.nd.gov/risk/forms/docs/sample-schedule.pdf